

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF	)	Case No. BK 18-81127-TLS
	)	
EAT FIT GO HEALTHY FOODS, LLC et al. <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	

**MOTION FOR AN ORDER APPROVING PAYMENT OF CERTAIN  
ADMINISTRATIVE EXPENSES**

COMES NOW, Eat Fit Go Healthy Foods, LLC, et al., debtors and debtors-in-possession in the above captioned bankruptcy case ("Debtors"), pursuant to 11 U.S.C. §§ 105(a), 363(c)(1) and 503, and in support of their Motion for an Order Approving Payment of Certain Administrative Expenses ("Motion"), states and alleges as follows:

1. On July 31, 2018 (the "Petition Date") Debtors filed 10 separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court (the "Related Cases") in the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court").
2. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not been appointed in any of the Related Cases.
4. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> Debtors in these cases include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC.

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### **Debtors' Background**

7. Debtors provided healthy chef-made meals that were high in protein and made fresh daily. Debtors' business operations offered one stop shopping where a customer could purchase breakfast, lunch, dinner, and snacks that are pre-cooked, pre-portioned and ready-to-eat.

8. Capitalizing on a growing trend in healthy foods, Debtors opened the first store in February of 2016, in Omaha, NE, and grew to 33 stores across eight states utilizing a mix of franchised locations and corporate owned stores. Beyond the rapidly increasing number of storefronts, Debtors planned to expand into e-commerce with a mobile app to facilitate delivery of healthy foods to customers' doors within 24 hours.

### **Relation of Debtors**

9. Each of Debtors is a legally separately entity. With the exception of Eat Fit Go Healthy Foods – Omaha, LLC, each of the other Debtors (the "Subsidiaries") is a wholly-owned subsidiary of Eat Fit Go Healthy Foods, LLC (the "Parent").<sup>2</sup> Each Debtor plays a unique role in Debtors' ongoing operations, be it as a manger of operations, corporate store, corporate kitchen, or leaseholder. Debtors utilize common branding for their operations.

### **Prior Key Developments in the Cases**

10. During the course of the cases, Debtors arranged to close various unprofitable locations and sell various assets. This culminated in Debtors' selling substantially all of their remaining business operations to Panorama Wellness, Inc. ("Purchaser") in a transaction approved by this Court that closed as of February 28, 2019 (the "Closing").

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<sup>2</sup> Parent is the managing member of Eat Fit Go Healthy Foods – Omaha, LLC.

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11. Simultaneous with the Closing, and as part of the order approving the sale conducted at the Closing, Debtors also compromised the claims of several key parties, including the claims of the primary secured creditor to Debtors, Access Bank, and claims involving various insiders and creditors, including Sardor (Sam) Vakhidov, Aaron McKeever, and Live Well Enterprises, LLC. Based on the compromise with Access Bank, there is no current secured creditor with a lien on cash collateral.

12. Since the Closing, Debtors consist of two former employees, Brock Hubert and Brooke Hogan, who work full-time for the Purchaser and provide services on an hourly basis to Debtors. These employees have collected and paid all known operating expenses in the ordinary course of business, and have commenced the process of analyzing (with counsel for Debtors) the only known remaining assets – certain potential avoidance actions under Chapter 5 of the Bankruptcy Code.

13. At this time, Debtors have approximately \$193,000 cash on hand, and unpaid administrative expenses of about \$65,000 to Debtors' financial advisor in the Sale, about \$59,580 to the U.S. Trustee, and about \$150,000 to Debtor's counsel. Separate Applications for allowance and payment (pursuant to this Motion) of the accrued fees and expenses of Peak and Stinson have been filed simultaneously with this Motion.

14. Based on these numbers, Debtors currently intend to pay all U.S. Trustee fees when due, and \$113,000 to Peak and Stinson pro rata based on their allowed fees and expenses (if the full amount of the requested fees and expenses are allowed, then this would result in Peak receiving about \$34,000 and Stinson receiving about \$79,000). This leaves a cash balance in the estates of about \$20,000 to pay ongoing administrative expenses, along with the recoveries from any avoidance actions under Chapter 5 of the Bankruptcy Code.

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15. Regarding potential avoidance actions under Chapter 5 of the Bankruptcy Code, Debtors have completed a preliminary analysis of potential avoidable transfers under Section 547 of the Bankruptcy Code and have identified over \$1 million of potential avoidable transfers. Accordingly, Debtors are in the process of identifying counsel to engage to pursue these matters.

### **Request for Relief**

16. Debtors hereby request authorization and direction to pay all U.S. Trustee fees when due, and \$113,000 to Peak and Stinson pro rata based on their allowed fees and expenses (if the full amount of the requested fees and expenses are allowed, then this would result in Peak receiving about \$39,000 and Stinson receiving about \$74,000<sup>3</sup>).

### **Legal Basis for Granting the Requested Relief**

17. First, the requested relief arguably is not necessary because Debtors generally have authority to pay administrative expenses incurred in the ordinary course of business without separate court order pursuant to Section 363(c)(1) of the Bankruptcy Code.

18. Second, the requested relief arguably is not necessary because the separate Applications to Peak and Stinson, if granted, will authorize Debtors to pay the allowed fees and expenses of Peak and Stinson pursuant to Sections 331 and 503 of the Bankruptcy Code.

19. Third, since the cases have been pending for almost a year, with various administrative expense matters already pursued, and since available cash is limited pending further recoveries from Chapter 5 actions, Debtors decided out of an abundance of caution to file and pursue this motion after appropriate notice and opportunity for a hearing to all parties in interest. *See, e.g., In re Premier Healthcare Services, Inc.*, 2015 WL 1221975 (Bankr. D. Minn. 2015).

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<sup>3</sup> By agreement between the parties

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WHEREFORE, Debtors respectfully request this Court enter an order: (1) granting the relief requested in this Motion; (2) overruling all objections to this Motion; and (3) granting any other relief at equity or law this Court deems necessary or appropriate.

**EAT FIT GOT HEALTHY FOODS, LLC,  
Debtors**

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